IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.7506 OF 2004

Nepal Art Palace .. Petitioner

v/s.

Customs and Excise and Gold
(Control) Appellate Tribunal
& ors. .. Respondents

Mr.Pranav Badheka for petitioner.

Mr.S.S.Pakale with Mr.Y.R.Mishra i/by
Mr.T.C.Kaushik for respondent Nos.1 and 2.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 1st November, 2004

P.C.

Heard Mr.Pranav Badheka, the learned counsel for the petitioner.

2. The appeal preferred by the present petitioner aggrieved by the order in original dated 28.9.2000 before the Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench at Mumbai (for short 'the Tribunal') came to be dismissed being barred by time and for want of satisfactory explanation for delay.

3. In the writ petition, the petitioner has denied the receipt of order in original dated 28.9.2000 and has set up the case that in the month of September, 2003, the petitioner came to know of the

order in original dated 28.9.2000 when they received the letter from Deputy Commissioner of Customs, Export Department, CFS Mulund (X) and immediately thereafter, the appeal came to be filed.

4. In the reply affidavit, the respondents, however, denied the case set up by the petitioner. The respondents have stated in paragraph 7 of the reply affidavit that the Commissioner of Customs (E.P.), Mumbai passed the order in original on 28.9.2000 and the copy of the said order was received by one Mr.Santosh on behalf of the petitioner and M/s.Eagle Shipping Agency. There is no justifiable reason in not accepting the stand of the respondent that the copy of the order dated 28.9.2000 was received by one Mr.Santosh on behalf of the petitioner and M/s.Eagle Shipping Agency. Admittedly, the appeal suffered from gross delay and dismissal thereof by the Tribunal cannot be faulted.

5. Dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)